IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11462 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DR. BIPINBHAI CHHABILBHAI SHAH

Versus

RASMIBEN BIPINBHAI SHAH

Appearance:

1. Special Civil Application No. 11462 of 2002

MR AJAY R MEHTA for Petitioner No. 1

MR SHAKEEL A QURESHI for Respondent No. 1

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 11/12/2002

ORAL JUDGEMENT

Rule. Mr.Qureshi appears for respondent and waives service of rule. With the consent of parties matter is taken up for final hearing.

2. The present petition is filed by the petitioner against the order, dated 28.10.02 passed by the 5th Joint Civil Judge (SD) Rajkot below application Exh.5 for interim maintenance whereby the defendant is ordered to pay interim maintenance at the rate of Rs.15,000/-p.m. from the date of suit till the disposal of the suit.

3. Heard Mr.Mehta for the petitioner and Mr.Qureshi for the respondent. After the arguments, Mr.Mehta for the petitioner as well as Mr.Qureshi for the respondent, both agree that if the amount of interim maintenance is fixed at the rate of Rs.10,000/- per month instead of Rs.15,000/- and if the suit is ordered to be expedited within a stipulated time limit, they have no objection for the same and their respective clients have also agreed for the same.

4. Considering the facts and circumstances of the case, and the perusal of the order passed by the learned trial judge primafacie shows that while arriving at the figure of Rs.15,000/-p.m. is on the basis of exaggerated amount of income found by the learned judge. However, in view of the fact that both sides have agreed for accepting the amount of Rs.10,000/- p.m.towards interim maintenance, I find that it is not necessary for this court at this stage to record the reasons since any observations which may be made by this court will prejudice the case of both sides before the trial court and therefore the reasons are not recorded and since both sides have agreed and considering the facts and circumstances of the case I find that the order of interim maintenance dated 28.10.02 passed by the trial court should be substituted by the amount of Rs.10,000/-p.m. from the date of suit till disposal of suit.

5. In view of the above, on account of concession given by both sides, the order, dated 28.10.02 passed by the trial court for interim maintenance stands substituted by Rs.10,000/-p.m.instead of Rs.15,000/-p.m. The petitioner has already deposited amount at the rate of Rs.5,000/-p.m. from 6.4.2002 till November, 2002 with the trial court as per interim orders passed by this court on 26.11.2002 and the petitioner shall deposit the balance amount on or before 26.12.02 with the trial court. The respondent-wife shall be at liberty to withdraw the said amount which already deposited and which may be deposited on or before 26.12.2002. The rest of the order passed by the learned judge shall continue.

6. After the aforesaid amount is deposited and withdrawn by the petitioner and allowed to be withdrawn by the respondent-wife as ordered earlier, the learned trial judge shall give priority to the matter and shall hear the suit as early as possible preferably within a period of six months thereafter.

7. It is clarified that it will be open to the trial court to take independent view of the matter at the time of final disposal of suit on the material available before it and without being influenced in any manner by the observations made by this court.

8. Petition is allowed to the aforesaid extent. Rule is partly made absolute accordingly. There shall be no order as to costs.

11.12.2002 (JAYANT PATEL,J)